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AUG 30 2011

IN THE  
SUPREME COURT OF THE STATE OF ILLINOIS

CLERK  
SUPREME COURT

PEOPLE OF THE STATE OF ILLINOIS, ) Petition For Leave To Appeal  
 ) from the Appellate Court  
Plaintiff-Appellant, ) Third Judicial District  
 ) No. 3-10-514, 3-10-515, 03-10-516  
 ) 3-10-513 and 3-10-546  
 )  
v. ) There Heard on Appeal from  
 ) the Circuit Court of Will County  
 ) No. 09 CF 1048  
DREW PETERSON, )  
 ) Honorable Stephen D. White  
Defendant-Appellee. ) Judge Presiding

FILED

AUG 30 2011

SUPREME COURT  
CLERK

MOTION FOR RELEASE OF DREW PETERSON

Now Comes the Defendant Drew Peterson, by all counsel of record, and moves this Honorable Court to order his release from detention, and in support thereof, states as follows:

1. The state filed a Petition For Leave To Appeal asking this Court to review the decision of the Appellate Court Of Illinois, Third District, in the state's Supreme Court Rule 604(a)(1) interlocutory appeal in the above-referenced mater. The Defendant is asking that this Court order his immediate release from jail. This Court has jurisdiction to release the Defendant, *de novo*, pursuant to Supreme Court Rule 604(a)(3). People v. Beaty, 351 Ill. App. 3d 717 (2004) and People v. Wells, 279 Ill. App. 3d 564 (1996).

2. The Defendant is charged with the first-degree murder of his ex-wife, Kathleen Savio. He was indicted by a grand jury in the Circuit Court of Will County, Illinois and arrested in May of 2009. He has been incarcerated in the Will County jail for more than two years in lieu of a \$20,000,000 bond.
3. The Defendant's trial was set to begin on July 8, 2010. However, on July 7, 2010, without any prior indication that it intended to do so, the state filed three separate interlocutory appeals. The trial was cancelled, and Defendant's right to a speedy trial was suspended. S. Ct. R. 604(a)(3).
4. The three appeals involve three different orders suppressing the introduction of evidence at the Defendant's trial.
5. The state filed a "Certificate Of Substantial Impairment To Proceed To Trial," as required by People v. Carlton, 98 Ill. 2d 187 (1983), in each of its three appeals. The three sworn statements state as follows:

"The suppression order substantially impairs the state's ability to proceed with this case. WHEREFORE, the People of the State of Illinois certify that they are unable to proceed to trial in this matter....."
6. Therefore, the state has certified that each of the three orders suppressing evidence are so crucial that if any one is allowed to stand, it does not have sufficient evidence to prosecute the Defendant.<sup>1</sup>

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1 Apparently Will County State's Attorney Glasgow does not take his sworn declarations very seriously. In two interviews given to the press (CBS and WBBM) on August 26, 2011, the date its PLA was filed with this Court, Mr. Glasgow stated that "we are prepared to go to trial regardless of the outcome" (of the PLA). That Mr. Glasgow can certify to the Appellate Court (and this Court) that the State is "unable to proceed to trial" without the excluded evidence, and yet make a public statement that he will proceed to trial, even if the PLA is denied and the lower courts' rulings stand, calls for an explanation at the very least.

7. On July 26, 2011, the Illinois Appellate Court, Third District, issued its opinion dismissing one of the interlocutory appeals for lack of jurisdiction (Appeal No. 3-10-514) and affirming the trial court's order suppressing evidence in the other two appeals. (Appeal Nos. 3-10-514, 3-10-550, 3-10-513, and 3-10-546).
8. Since the state's appeals were rejected, all three of the trial court's orders suppressing the state's evidence remain unchanged. Therefore, the state's case is as substantially impaired today as it was when it filed its interlocutory appeals over a year ago.
9. The Defendant has been denied his constitutional and statutory rights to a speedy trial since July 7, 2010, which is over 13 months.
10. The Defendant has petitioned both the trial and appellate courts for his release pursuant to Supreme Court Rule 604(a)(3) pending the instant interlocutory appeals. The trial court rejected Defendant's motion on July 8, 2010, and found that there were unspecified "compelling reasons," to keep the Defendant incarcerated during the appeal.<sup>2</sup> The Appellate Court has also rejected, twice, the Defendant's motions for release. However, all of these denials were issued before the Appellate Court rejected the state's interlocutory appeals.
11. This Court is in a better position to order the Defendant's release because evidence that the state admitted was crucial and essential to its prosecution

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<sup>2</sup> See transcript of trial court hearing on the Defendant's Motion For Release, attached as Defendant's Exhibit A.

will be barred at trial.

12. While it is Defendant's position that this Court deny the state's Petition for Leave to Appeal ("PLA"), if it grants the PLA, the Defendant will continue to be incarcerated without his constitutional right to a speedy trial, perhaps for as long as another year, unless this Court orders the Defendant's release.
13. Should this Court then reverse the Appellate Court's decision to dismiss Appeal No. 3-10-514 for lack of jurisdiction, the matter will be remanded to the Appellate Court to consider the issues on the merits, which could take an additional six months to a year.
14. Even if this Court denies the PLA, Defendant will continue to be held in the Will County Jail for several months while the PLA is pending before this Court, with the suspension of his statutory right to a speedy trial is still in place.
15. "Generally, it is anticipated that defendants will enjoy complete freedom during a delay occasioned by interlocutory appeal." People v. Wells, 279 Ill. App. 3d 564, 567 (1996).
16. "Supreme Court Rule 604(a)(3) contemplates the restoration of that freedom lost when the prosecution was commenced." Id. "604(a)(3) favors release. Its paramount aim is to guarantee protection from the power granted to the State under Supreme Court Rule 604(a)(1)." Id.
17. "A defendant's pretrial imprisonment during the pendency of a State's appeal is the rare exception to a rule favoring release". Id.

18. Supreme Court Rule 604(a)(3) requires the release of the Defendant during an interlocutory appeal because S. Ct. R. 604(a)(4) suspends the speedy trial rights of a Defendant who is in custody, unless the state can show that there are “compelling reasons” to continue the Defendant’s detention. People v. Beaty, 351 Ill. App. 3d 717 (2004).
19. The only purported compelling reason given by the state for the Defendant’s continued detention is a pre-trial evidentiary ruling under 725 ILCS 5/115-10.6, where the trial court found by a preponderance of the evidence that the Defendant killed Kathleen Savio and Stacy Peterson.<sup>3</sup>
20. However, a finding by a preponderance of the evidence is insufficient. The evidentiary hurdle for continued detention is higher than the preponderance or probable cause standard that previously applied. The proper standard is one of compulsion, which is “*proof as evident or the presumption great that a defendant indeed committed the crime of murder.*” People v. Wells, 279 Ill. App. 3d 564, (5th Dist. 1996) (emphasis added).
21. “Compelling reasons are forceful and impelling reasons irresistible in sense and purpose that afford justification for indeterminate pretrial imprisonment. Such reasons must clearly demonstrate that a defendant should remain imprisoned for an uncertain and indefinite time despite the

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3. See Defendant’s Exhibit A. Much of the evidence heard at that pre-trial hearing was hearsay that was eventually suppressed and excluded from being introduced into evidence at trial because the trial court judge found that it was unreliable. This is the unreliable hearsay that was the subject of Appeal No. 3-10-5414. Also, the hearing was extraordinarily one-sided. Unlike in a suppression hearing, the defendant has no protection against the use of evidence he may present at a subsequent trial, thus limiting his ability to defend himself.

- presumption of innocence and the weakened posture of the state's case". Id.
22. No such compelling or evident proof that the Defendant committed murder has ever been presented. Further, no "forceful and impelling reasons irresistible in sense" have ever been shown which would require the Defendant's continued incarceration "despite the presumption of innocence and weakened posture of the state's case." Id.
23. Nothing has been shown that Defendant would be a danger to anyone if released. Regardless of whatever the perception or "gut feeling" of some members of the public may be, the fact remains that Defendant was a veteran police officer of supervisory rank with thirty years of service.
24. There has never been more than a mere finding of probable cause that Defendant committed any criminal act. At this point, this is a case without any physical evidence tying the Defendant to any crime, (if any crime was committed, which is a matter of contention), without any eyewitnesses or confession. Rather, the case against the Defendant is premised solely upon the few remaining hearsay statements, which were not recounted until years after Ms. Savio's death and two exhumation autopsies, the results of which various respected experts strongly disagree.
25. Defendant, Drew Peterson, is 56 years old, and is a lifelong resident of Illinois. He has no criminal convictions. He lived in Lombard, Illinois before moving to Bolingbrook, Illinois in 1977.
26. Mr. Peterson is a military veteran, who served in the United States Army

from 1974 to 1976. He was based in Washington D.C. and served in the Military Police Unit in Arlington, Virginia. His duties included providing security for dignitaries, including the President of the United States. Mr. Peterson has provided security for President Gerald Ford. Mr. Peterson was granted an Honorable Discharge from the U.S. Army in 1976.

27. Mr. Peterson has extensive family contacts in the Will County and Northern Illinois areas. He does not have any family outside of Northern Illinois.
28. Drew's six children, one grandchild, and four nieces and nephews, all of whom live in Northern Illinois. His children are ages 6, 7, 16, 18, 30 and 31. Five of the Peterson children reside in their father's home in Bolingbrook, Illinois, where the older children are caring for the younger ones. Mr. Peterson's mother is 87 years old and lives in Westmont, Illinois. His brother and sister also live in Illinois.
29. Defendant's home in Bolingbrook is paid for and is not the subject of any mortgages. He does not own any other real estate.
30. Mr. Peterson is retired, and his only source of income is his pension from the Bolingbrook Police Department, which is approximately \$6,000 per month. He has no substantial savings or investment accounts.
31. Mr. Peterson worked in Will County, Illinois since 1977 as a law enforcement officer. He was hired by the Bolingbrook Police Department in 1977 and became a Sergeant in 1997. He was police officer of the year in 1979 and has received numerous departmental commendations for his work over the years.

Further, for a five-year period in the 1980s, Mr. Peterson was assigned to the Metropolitan Area Narcotics Squad ("MANS"), where he put his life on the line on a daily basis as an undercover narcotics officer. In 1981, Mr. Peterson received a department commendation for his drug arrests. Also, during this period, he worked with the Federal Drug Enforcement Agency on dangerous undercover operations.

32. It is clear that Mr. Peterson is not a flight risk. He was the publicly announced subject of an investigation into the death of Kathleen Savio, the alleged victim in the above-referenced indictment, for eighteen months prior to his arrest. During this period, Mr. Peterson traveled to Los Angeles, California and New York and did not flee.
33. Mr. Peterson is a United States Citizen. The Illinois State Police have his passport, which was taken when he was arrested.

WHEREFORE, for the foregoing reasons, Defendant, Drew Peterson, requests that this Honorable Court grant his Motion For Release and any further relief this Court deems just.

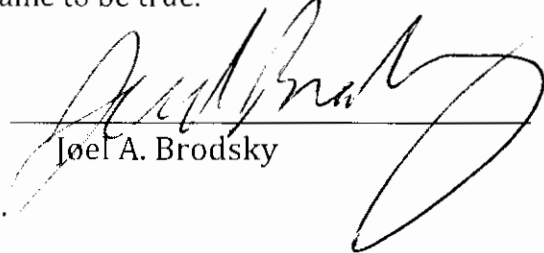
Respectfully submitted,  
Drew Peterson, Defendant

By: 

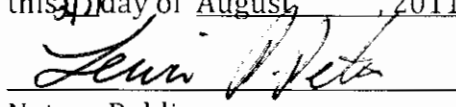
Joel A. Brodsky  
One of His Attorneys

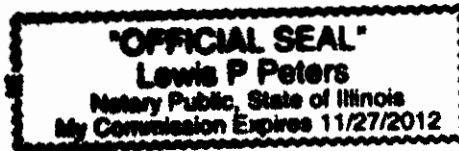
**AFFIDAVIT**

I, **Joel A. Brodsky**, certify under penalties of perjury that the statements set forth in the foregoing Renewed Motion For Release, are true and correct except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Joel A. Brodsky

Signed and Sworn to before me  
this 31st day of August, 2011

  
Notary Public



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1 STATE OF ILLINOIS )  
 ) SS:  
 2 COUNTY OF W I L L )

3 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
 4 WILL COUNTY, ILLINOIS  
 5

6 THE PEOPLE OF THE )  
 STATE OF ILLINOIS, )

7 Plaintiff, )  
 8 )

9 vs. )

No. 2009 CF 1048

10 DREW W. PETERSON )  
 )

11 Defendant. )

12 REPORT OF PROCEEDINGS had at the hearing in  
 13 the above-entitled cause before the Honorable STEPHEN D.  
 14 WHITE, Judge of the Twelfth Judicial Circuit, on July 8th,  
 15 2010.

16 APPEARANCES:

17 HON. JAMES W. GLASGOW,  
 18 STATE'S ATTORNEY OF WILL COUNTY, ILLINOIS  
 with MR. JOHN R. CONNOR, MS. KATHLEEN  
 19 PATTON, and MS. NICOLE L. MOORE,  
 Assistant State's Attorneys for the People;  
 20 MR. JOEL A. BRODSKY and MR. JOSEPH R. LOPEZ,  
 Attorneys at Law,  
 21 Appearing on behalf of the Defendant.

22 MICHELLE PANOS, C.S.R.,  
 CSR 084-004154  
 23 Official Court Reporter  
 Will County Courthouse  
 24 Joliet, Illinois

EXHIBIT

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tabbies

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I N D E X

Drew W. Peterson  
2009 CF 1048

HEARING

Proceedings . . . . . Pages 3-30

Reporter's Certificate . . . . . Page 31

1 THE COURT: All right. Now, according to courtesy  
2 copies, I received a courtesy copy of the defense motion to  
3 release the defendant at about 3:00. I received courtesy of  
4 the State's notice -- not Notice of Appeal but Certificate of  
5 Impairment at about 3:55 in the afternoon.

6 It was too late to stop the jurors from  
7 coming in. We have the jurors here today. We're going to  
8 have to address that issue at one point. First thing, we  
9 have some Certificates of Impairment, three of them filed on  
10 behalf of the State. Is that correct?

11 MR. GLASGOW: That's correct, your Honor.

12 THE COURT: Okay. Now, I think we can do this  
13 without going into the things that were previously sealed.  
14 First Certificate of Impairment stating that you could not go  
15 forward without the evidence of lawyer Diane Panos; is that  
16 correct?

17 MR. GLASGOW: That's correct, judge.

18 THE COURT: Okay. Which was I indicated that I  
19 would not allow her to testify that Drew Peterson's attorney,  
20 Mr. Beck, Alex Beck, would have told him or impute to him  
21 knowledge that she thinks -- knowledge that would have been  
22 told to him and also her opinion as to how Judge O'Leary  
23 would have ruled on the case. Is that correct? That's the  
24 only thing that's been precluded.

1 MR. GLASGOW: At this point, we filed our Notice  
2 of Appeal along with the Certificates of Impairment so that  
3 the jurisdiction is now with the Appellate Court.

4 THE COURT: Correct. We want the record clear as  
5 to what the issue --

6 MR. GLASGOW: Without checking the transcripts, I  
7 don't want to agree to that. I'm not saying that the Court's  
8 making a misstatement, but I would like an opportunity to  
9 make sure it matches what the transcript says.

10 THE COURT: I was just clarifying because there  
11 was other testimony that was had that I said would be  
12 perfectly permissible by her, but her opinion to impute to  
13 Mr. Peterson what his attorney would have told him or should  
14 have told him and to also testify as to how Judge O'Leary  
15 would have ruled in a case I said was not going to be  
16 allowed.

17 I don't know if there was anything else with  
18 regards to that. As I recall, those are the only two  
19 specific things with regards to that that I indicated I was  
20 not going to allow her opinion testimony as to that. If  
21 there's something else you want to add to that. As I recall,  
22 that's all that was there.

23 The next one was the Certificate of  
24 Impairment which indicates that could not -- each Certificate

1 of Impairment as I understand it would have to stand on its  
2 own so that, you know, if that was the only thing that was  
3 there at issue, that certificate would have been filed saying  
4 you could not go forward without that opinion testimony.

5 Second one was the domestic dispute in 1993,  
6 which was ruled upon that was said that that was not going to  
7 be allowed because that was too remote in time and there was  
8 nothing in -- I believe it was 1993. There was nothing in  
9 '94, '95, '96, '97, '98, '99, 2000 until it got into the  
10 2000s. There was a Certificate of Impairment that was filed  
11 with regards to that.

12 MR. GLASGOW: Again, we're going to rely on the  
13 transcripts. There was more to it than that. Again, I'm  
14 not -- I don't have the transcript in front of me.

15 THE COURT: Okay. Now, the last thing which is  
16 the Court's ruling on Tuesday which I gave to all sides with  
17 regards to the State's motion to reconsider the Court's  
18 ruling in May of this year with regards to the hearsay.  
19 Without going into what the Court's ruling was at that  
20 time -- I must say that the order that I gave you was very  
21 short to both sides. That was due to the fact that it  
22 appears that someone is either tapping into the computers and  
23 attempting to get the documents or somebody is giving the  
24 documents to the press. Therefore, it was a very short

1 order.

2 But when the State asked me to reconsider the  
3 ruling that I had given -- and my ruling as it stands does  
4 not subtract or add one piece of evidence with regards to  
5 hearsay that was not going to be allowed several months  
6 before when the State said that they were ready for trial.  
7 Am I correct? Yet, the State has filed a Certificate of  
8 Impairment saying it cannot go forward with regards to that,  
9 but it has not added or subtracted one bit of evidence that  
10 was not ruled upon according to the State's second amended  
11 motion.

12 Now, with that, the State came in, asked me  
13 to reconsider. I did reconsider. I looked at the testimony  
14 of the hearing. I looked at the testimony -- of the  
15 arguments of all counsel. The original motion was had and I  
16 ruled based upon a Statute, a Statute in Illinois that  
17 codifies Giles and forfeiture by wrongdoing in the state of  
18 Illinois. The basis of the Court's ruling on Tuesday was the  
19 fact that when you codify common law-- correct me if I'm  
20 wrong. I'm sure the Appellate Court may if I'm wrong --but  
21 that codification then takes precedent over the common law  
22 unless it's held unconstitutional or thrown out.

23 The defense asked me previously to throw it  
24 out as unconstitutional. I stood and I listened to arguments

1 by the State indicating that it afforded more protection than  
2 the forfeiture by wrongdoing. I held it constitutional  
3 pursuant to that Statute. We had a hearing.

4 Now, in the motion to reconsider, the Court  
5 viewed it, and I saw there was no cases or anything else that  
6 was given to me that indicated anything other than reviewing  
7 it in light of the Hanson case. The Hanson case was a case  
8 that was decided upon the common law doctrine of forfeiture  
9 by wrongdoing. The Statute which the state of Illinois now  
10 has was not in position at the time in which Hanson was  
11 tried. Therefore, its decision -- and the Court never even  
12 addressed the new Statute because the new Statute was not in  
13 play at the time.

14 The Statute itself says that it -- in the  
15 last sentence, it draws attention to forfeiture by  
16 wrongdoing. As the Statute is there, to say that the  
17 forfeiture by wrong -- if you can't meet this burden in the  
18 Statute, that therefore, you get to use the lesser burden of  
19 forfeiture by wrongdoing, the Court cannot apply. Therefore,  
20 that's the reason for the ruling of the Court that the --  
21 which I previously ruled, okay, stood because I cannot fall  
22 back upon forfeiture by wrongdoing because we have a Statute  
23 now that addresses it. So now the record is clear with  
24 regards to that.

1           The State has filed -- it's not Notice of  
2   Appeal. I saw the certificates. I was given courtesy copies  
3   of that. I did not see a Notice of Appeal.

4           MS. OSTERBERGER: I had brought the courtesy  
5   copies to you. Respectfully, there were copies of the  
6   notice.

7           THE COURT: I may have missed that. I was reading  
8   the other one. That's okay. There is a notice of appeal  
9   filed. Now, it's in the jurisdiction of the Appellate Court.

10          But we have some clean-up matters. By filing  
11   the notice of appeal, it's out of my hands until the  
12   Appellate Court rules or then the Supreme Court following  
13   that. So, therefore, we have some clean-up matters. First  
14   of all, I don't see all counsel here. I know Mr. Greenberg  
15   is on trial still.

16          MR. BRODSKY: Yes.

17          MR. LOPEZ: Yes.

18          THE COURT: You desire to proceed without him?

19          MR. BRODSKY: Yes, your Honor.

20          THE COURT: We have jurors that are present. At  
21   the time I received everything and was aware of what was  
22   going on yesterday unless I followed -- you know, wanted to  
23   go by what the press said, I did not have time and the Jury  
24   Commission did not have time to call off the jurors. We

1 still have numerous jurors that have been down there which we  
2 have tried to protect from the press, not from the press but  
3 from reading things in the press.

4 I have them there now. They are reviewing  
5 their questionnaires as we speak to see whether or not since  
6 October when they were here whether there's any additions or  
7 deletions that they would like to make to the questionnaire.

8 Has the State inquired as to whether or not  
9 it will be an expedited appeal?

10 MR. GLASGOW: Not at this point, judge.

11 THE COURT: We don't know a timeframe?

12 MR. GLASGOW: Correct.

13 THE COURT: We know then that they could take six  
14 to nine months. I have had -- I'm saying six to nine months  
15 would be an average time on a normal appeal unless it's  
16 expedited. I have had jurors since October. Six months  
17 would take it to December which would take it to 15 months in  
18 which the people would be held on one case.

19 MR. BRODSKY: I understand. I have a question.

20 THE COURT: I can, you know --

21 MR. BRODSKY: If your Honor is asking us if we  
22 think the venire should be dismissed, I think we should.

23 THE COURT: Well, I'm sitting here looking at  
24 suggestions and then I'm going to have to take your

1 suggestions here. I'll rule on this this morning.

2 As to the State?

3 MR. GLASGOW: If I you could have a moment.

4 THE COURT: Sure.

5 (Brief pause.)

6 MR. CONNOR: As they are conferring, I would like  
7 to point out we are missing another counsel as well,  
8 Mr. Meczyk.

9 MR. LOPEZ: Yes. But Mr. Goldberg, his partner,  
10 partner is here.

11 MR. GOLDBERG: Good morning. Mr. Meczyk is on his  
12 way.

13 MR. BRODSKY: We will proceed expeditiously.

14 MR. GLASGOW: I understand that this creates a bit  
15 of a complex situation. Again, we want to make sure that the  
16 record is protected, that the defendant gets a fair trial.  
17 If there's any way to retain these jurors, then that would be  
18 the State's position. But we understand if it's not a  
19 possibility.

20 THE COURT: It's just the time period in which we  
21 have had them, you know, which draws some concern with that.  
22 There's nothing that says I can't put them over and their  
23 jury duty is continued until the termination of the case.  
24 Like I said, I have 30 of them -- I think 31 that are

1 downstairs currently looking at their questionnaires. I have  
2 30 more that will be here this afternoon because they could  
3 not be called off either. I'm going to have to tell them  
4 something. Then we're going -- I have their questionnaires  
5 ready, too, to see if there's any additions or deletions. We  
6 can call off tomorrow's, but then we wouldn't have any  
7 corrections to their questionnaires.

8 There's a group today in the morning, this  
9 afternoon, tomorrow morning, tomorrow afternoon, Monday  
10 morning, and Monday afternoon, Tuesday morning, Tuesday  
11 afternoon. We could call off all the rest, but then we  
12 wouldn't have any corrected questionnaires.

13 While you contemplate that, is there anything  
14 further?

15 MR. BRODSKY: Obviously, our motions regarding the  
16 Rule 604(3) release.

17 THE COURT: Okay. You want to be heard on that?

18 MR. BRODSKY: Yes, your Honor. Mr. Lopez will be  
19 handling that issue for the defense.

20 THE COURT: That's fine.

21 MR. LOPEZ: I believe the State has the burden.  
22 They have to demonstrate compelling reasons why Mr. Peterson  
23 should not be released on unconditional terms.

24 MR. GLASGOW: Judge, we filed also a motion under

1 the Statute. We are aware the Statute indicates that the  
2 defendant cannot be held incarcerated or on bond without  
3 compelling reasons. I would ask the Court simply to look at  
4 the record in this case. Initially, a \$20 million bond was  
5 set prior to the hearing that your Honor presided over for  
6 five weeks which your Honor could take judicial notice of all  
7 the evidence that was heard at the time now in deciding this  
8 matter.

9 So the \$20 million bond was set at the  
10 Gerstein stage. It went up to the Appellate Court. Again,  
11 before the hearing was had, the Appellate Court expeditiously  
12 affirmed the \$20 million bond and sent it back. We then had  
13 the five-week hearing where all the evidence was brought  
14 before your Honor relative to both Kathleen Savio and Stacy  
15 Peterson. Under seal, your Honor has made certain findings  
16 and rulings which I'm not going to obviously speak of here  
17 and your Honor could take -- obviously take judicial notice  
18 of those and that's -- there's no case law on that part of  
19 this. But I would argue to the Court that that's something  
20 that the Court needs to give great weight.

21 Basically -- Finally, Mr. Peterson is a very  
22 sophisticated individual, 30 years police experience. Based  
23 on the -- this case and the -- As the Court well knows, we  
24 had an issue come up with regards to Stacy Peterson in this

1 case. That's still there. Combining the facts relative to  
2 both of these issues, it's in the interest of justice that  
3 the bond remain at \$20 million during the pendency of this  
4 appeal.

5 THE COURT: Hang on just a moment. Has the State  
6 inquired or made a motion to the Appellate Court to keep the  
7 rulings of the Court sealed and not made public or when all  
8 of this goes to the Appellate Court, is this going to be wide  
9 open argument that will then be known by everybody?

10 MR. GLASGOW: We will make the attempt, judge. As  
11 the Court knows, we can't control that.

12 THE COURT: I understand.

13 MR. GLASGOW: We will make

14 THE COURT: I just didn't know if there was  
15 anything filed with regards to that. I don't know if its  
16 ever been done in the Appellate Court.

17 MR. GLASGOW: We will request it obviously to  
18 maintain the integrity of what you have done so far.

19 THE COURT: Here's something very clear. If I  
20 continue to maintain this jury pool, that would be of the  
21 utmost importance. I mean, we have been trying to protect  
22 that jury pool of those potential jurors within this  
23 jurisdiction.

24 Mr. Lopez?

1 MR. LOPEZ: Your Honor, if it please the Court,  
2 members of the prosecution team. Judge, Rule 604(a)(3) calls  
3 for nothing unique or novel in this case. The trial is  
4 indefinitely postponed now because the State has filed an  
5 appeal. The power to accuse is not the power to punish. By  
6 holding him indefinitely, that is punishment.

7 So the type of reasons that you look to --  
8 There are a few cases on this issue. The State has them. I  
9 would tender to the Court the case of People versus Wells.  
10 In Wells, your Honor -- I'll cite it, 279 Illinois Ap. 3d  
11 564. In that case, judge, the individual was charged with  
12 murder. He was in pretrial detention being held without bond  
13 for approximately four years.

14 What the Wells Court noted, your Honor, is  
15 that there are no exceptions for the types of cases at which  
16 604(a)(3) can apply. In other words, the fact that it's a  
17 murder case or a robbery case, it really doesn't matter.  
18 What the State has to show is that there are some type of  
19 compelling reasons to hold the defendant on this case subject  
20 to the bond that previously was set.

21 It's my understanding out of Rule 604(a)(3),  
22 that the Court looks at the standards -- excuse me, looks at  
23 the factors set out in 725 I.L.C.S. 5/110-5, which is the  
24 termination of the amount of bail. According to Wells, it

1 says the rules simply suggests these reasons and to hold it  
2 to a higher standard.

3 So in our case, judge, the State has to show  
4 compelling reasons why the defendant should be held for an  
5 indeterminate time under a pretrial release order. Because  
6 there is a release order. The release order is subject to  
7 the \$20 million bond that was previously set in the case. So  
8 that is part of the release order.

9 But here, the delay in this case, as the  
10 Court has noted, could be six to nine months. The State  
11 hasn't been able to show there's any legitimate safety  
12 concern to any victims or witnesses in this case. This is  
13 not a charge -- The defendant is not charged with a case that  
14 requires a mandatory life sentence.

15 There is a -- In our case there is a  
16 Bolingbrook police officer who is an officer for 32 years.  
17 He made the rank of sergeant. The State cannot at this time  
18 show that the defendant ever harassed any witnesses, ever  
19 attempted to obstruct any justice, ever attempted to impede  
20 any justice.

21 The State can't show the defendant is a  
22 flight risk because he's not a flight risk. He's been in  
23 this community for over 30 years. He's been a citizen of  
24 Will County. He's never stalked any witnesses in this case.

1                   He no longer possesses any weapons. As you  
2 know, there was search warrants and all the weapons were  
3 seized in this case. Again, he has no history of abusing  
4 drugs or alcohol. Those are the factors that Wells asked the  
5 Court to look at, whatever you can find at 725 I.L.C.S.,  
6 5/110-5.

7                   However, Wells does make it crystal clear,  
8 your Honor, that the defendant cannot be released on any  
9 types of conditions. It has to be an unconditional release.  
10 Even if you wanted to release the defendant at this point and  
11 say, you know what, Mr. Peterson, we need you to come down  
12 here and check in with pretrial services every day, it has to  
13 be completely unconditional, completely free.

14                  The reason why that is, judge, is because now  
15 what happens is he loses his right to a speedy trial. He  
16 loses his right to a speedy trial because the State has now  
17 filed this interlocutory appeal, it suspends the entire case.  
18 Now, the defendant can sit there indefinitely for as long as  
19 it could be because he doesn't have a right to speedy trial.  
20 We can't demand a speedy trial under 604(a). In the cases it  
21 indicates the speedy trial rights are lost upon the filing of  
22 the interlocutory appeal. The defendant is stuck at the  
23 position that he is stuck in now if the Court doesn't release  
24 him.

1           It's crystal clear, under 604, it says  
2   release of defendant pending appeal, defendant should not be  
3   held in jail or to bail during the pendency of an appeal by  
4   the State unless there's compelling reasons for the continued  
5   detention or being held to bail. Again, the compelling  
6   reasons -- I suppose people could differ on what compelling  
7   reasons might be, but you have to restore the defendant's  
8   freedom when an interlocutory appeal is filed because he  
9   loses the statutory right to a speedy trial.

10           Here, the State has filed this Certificate of  
11   Impairment. You have just gone over the three certificates  
12   which basically states to the Court that, judge, without this  
13   evidence, we can't be successful in our prosecution, our  
14   prosecution is now impaired. It would be very, very, very,  
15   very unconstitutional to continue to hold the defendant to  
16   this bail based on the circumstances we just heard.

17           Because without that evidence -- If the  
18   Appellate Court rules that Judge White did the right thing,  
19   then the State's going to be forced to make a decision later  
20   on as to whether or not they are going to proceed with  
21   whatever they have left or to simply say, we tried, we  
22   couldn't get the evidence in, the Appellate Court ruled  
23   against us, the Supreme Court ruled against us, and as a  
24   result of that, we are not going to proceed any further, we

1 are going to have to dismiss the charges against the  
2 defendant.

3 One thing the State did ask you to consider  
4 is the things you heard at the hearsay stage. However, under  
5 Wells, it says that you shouldn't consider any of the  
6 excluded evidence. So any of the evidence that has been  
7 excluded, the points that you excluded, shouldn't be  
8 considered in making your determination. Those are now on  
9 appeal and those are out. That's what Wells says.

10 Compelling reasons just don't exist in this  
11 case. The defendant as you know was -- from 2004 until the  
12 time -- excuse me, from 2007 until the time of his arrest, he  
13 remained in the area. He didn't intimidate, harass, or  
14 attempt to influence any family members of his or family  
15 members of his - of Ms. Savio. Didn't do anything in that  
16 regard. He remained here. He was arrested here. He was  
17 arrested on his way to pick up his children.

18 He's not a flight risk. If he wanted to run,  
19 he certainly could have ran. He had every opportunity to run  
20 prior to the execution of any search warrants. He could have  
21 done whatever he wanted. If he wanted to get a passport and  
22 run to a country that didn't have extradition, he could have  
23 done it. He didn't do that. He stayed here.

24 Also, there's no indication in the record

1 that he's ever violated any orders of the Court in regard to  
2 any of the prosecution in his case. That shows -- That's  
3 another factor to take into consideration under the bail  
4 Statute. The bail Statute asks you to take in all these  
5 different things. Wells says just look at the bail Statute.  
6 This really isn't a bail hearing. This is a release hearing.  
7 We can't really entitle it bail hearing. This is actually a  
8 release hearing. The defendant has to be released  
9 unconditionally.

10 The State we know has an absolute right to  
11 file an interlocutory appeal. Once the interlocutory appeal  
12 is filed, according again to Wells, it suspends the statutory  
13 speedy trial rights once the appellate jurisdiction is  
14 imposed. What Wells goes on to talk about -- There's few  
15 cases that discuss 604, Wells being one that's probably the  
16 closest to our case.

17 I also want to note, too, that at one time  
18 the State's Attorney's Office sent a letter to the chief of  
19 police dated November 10, 1994, regarding Officer Peterson  
20 and other officers and said that the -- each of the above  
21 referenced members of your department were involved in the  
22 investigation that ultimately led to the conviction of  
23 Kenneth -- I'll spell the last name, C-e-b-e-r-t-o-w-i-c-z,  
24 for the cold blooded first degree murder for his wife

1 Victoria. The successful trial is the result of continued  
2 cooperation between our office and the members of your  
3 department. I want to compliment each of the members of your  
4 department who are involved in the case. I want to thank  
5 them for the work they put into it. They are a credit to  
6 your department.

7 This was sent to Chief Ronald Chruszyk,  
8 C-h-r-u-s-z-y-k, from the Bolingbrook Police Department dated  
9 November 10, 1994. It's in regard to the case I just  
10 mentioned. It's regarding Officer Peterson, who is now  
11 Sergeant Peterson, Officer Johnston, Investigator Toomey,  
12 Sergeant Darragh, Officers Shaefer, Riley, and Juli Coughlin.

13 Over the course of Mr. Peterson's career in  
14 law enforcement, he's received commendations not only from  
15 the police department, but he's also received glowing  
16 accolades from Mr. Glasgow's office. It's signed by first  
17 assistant state's attorney Doug Deboer, D-e-b-o-e-r. These  
18 are the types of things that you can take into consideration,  
19 the defendant's past, what he's done, to determine whether or  
20 not the State has shown you any compelling reasons in which  
21 you should hold Mr. Peterson to this bail amount that was  
22 previously set.

23 They simply haven't been able to do that  
24 because it's not any more unique than the Wells case. The

1 Wells involved a murder, it involved an extradition. In  
2 Wells, the lower court, the trial court, he would not release  
3 the defendant, and the Appellate Court basically said Justice  
4 Kuehn said that you have to release him unless there's some  
5 compelling and overriding reasons. I would suggest to the  
6 Court that those are the types of things you have to look  
7 for. Is the defendant a threat to anybody on the street? He  
8 is not. They haven't come forth with any evidence to show  
9 that he's a continuing threat.

10 They haven't come forth with any evidence to  
11 show that more likely than not that he will do something. In  
12 fact, the evidence shows more likely than not that Mr.  
13 Peterson will be a law abiding citizen, will reside in his  
14 community, will take care of his children, and do other  
15 things. He's demonstrated in the past by the conduct which  
16 he exhibited over the course of the years from 2007 until the  
17 time of his arrest.

18 Based on that, judge, we ask the Court to  
19 order the release of the defendant without any conditions and  
20 that the -- regardless of the reasons that were made in the  
21 initial bail determination, 604 still entitles the defendant  
22 to release unless again there's some compelling reasons. It  
23 requires the Court to look at whether or not there are any  
24 compelling reasons, what are the reasons why. Point to one

1 reason why we shouldn't release the defendant. Who is he  
2 going to harm? Is he going to run away? It isn't there.

3 It's unfair to keep the defendant locked up  
4 for an indefinite period of time. This case could linger on  
5 for a long time. There could be extensions of time filed.  
6 If you think about it, this is the realistic possibility of  
7 what could happen. What could happen in this case-- it's  
8 something we should take into consideration -- is the State's  
9 Attorney, Mr. Glasgow, has filed his notice of appeal. The  
10 Court will set up a briefing schedule. They will go first,  
11 they are -- the appellants, and the appellee gets an  
12 opportunity to respond. The appellants get another  
13 opportunity to reply. Then the Court may or may not ask for  
14 oral argument sometime down the road.

15 After the oral argument is completed, it  
16 could take whatever amount of time it could take for the  
17 Appellate Court to reach a decision. If it's adverse to  
18 Mr. Glasgow and his office, I'm more than confident that they  
19 will seek a petition for leave to appeal to the Supreme  
20 Court, which is another 30 days to file that, another  
21 opportunity for the Court to take it under consideration and  
22 look at it.

23 If it's an adverse decision to Mr. Peterson  
24 and the Court overrules your Honor's decision, which I don't

1 think it will be because you relied on the Statute and Hanson  
2 relied on common law doctrine of forfeiture because it wasn't  
3 in effect at the time, then we could file -- appeal it. The  
4 Supreme Court could decide we'll take it or not take it.  
5 Let's say they do take it, they take it and whatever ruling  
6 they may make, that might be sometime next year or the year  
7 after.

8 Then the other alternative left for whoever  
9 is not the prevailing party is an attempt to go to the  
10 U.S. Supreme Court. This case could linger on in the  
11 appellate courts for longer than six or nine months.  
12 Realistically, it could be a few years before there's an  
13 ultimate decision in this case. Those are the types of  
14 things you should take into consideration.

15 During that period of time, this defendant as  
16 any other defendant who can avail himself to 604 loses one of  
17 the most -- I would say one of the biggest constitutional  
18 rights he has and that's a right to a speedy trial. That's  
19 simply unfair. That's simply not something that 604  
20 contemplated.

21 Supreme Court Rule 604 is pretty clear-cut.  
22 The Supreme Court has decided that people who are charged  
23 with a crime who are subject to interlocutory appeal are also  
24 subject to have their freedom restored. That's what Wells

1 says. We're asking you to restore the defendant's freedom,  
2 to allow the defendant to be released unconditionally because  
3 the State hasn't shown any compelling reasons for this Court,  
4 for your Honor, to be able to point to anything specific and  
5 say, you know what, I don't want to let Mr. Peterson out  
6 because A, B, C, D, E, or F may happen, and I have a  
7 legitimate concern either for the safety of the community or  
8 that he is a risk of flight. They haven't demonstrated  
9 either one of those, judge.

10 MR. GLASGOW: Very quickly. Wells says that the  
11 State needs to validate its desire to prolong its hold on  
12 defendant's freedom with something more than its power to  
13 accuse.

14 This case is unprecedented in the state -- of  
15 the annals of justice in Illinois. Never before has there  
16 been a hearing like your Honor presided over. It's a case of  
17 first impression. During those five weeks -- Again, we're in  
18 a delicate situation here because we can't talk about the  
19 ultimate resolution. But for five weeks we put on evidence  
20 that Drew Peterson killed Kathleen Savio with the intent to  
21 silence her and we also put on evidence that he killed Stacy  
22 Peterson with the intent to silence her relative to the death  
23 of Kathleen Savio. If that isn't a danger that we put on  
24 evidence that someone was murdered to silence someone about a

1 previous murder, I don't know what could be more compelling.  
2 That is the most compelling argument we can possibly present  
3 this Court.

4 Again, five weeks of evidence that you can  
5 consider. He mentioned that you can't consider suppressed  
6 evidence. We're not talking about suppressed evidence.  
7 There's evidence that may not be admissible at trial that you  
8 can consider, a lot of it. So all that goes into the  
9 compendium when you make this decision as to whether or not  
10 there are compelling reasons to hold this man in jail during  
11 the pendency of this appeal and they are legion. The Court  
12 knows things that we can't discuss here. I ask you take  
13 those into account, also. Thank you.

14 THE COURT: Is there anything else we have to  
15 address?

16 MR. LOPEZ: No.

17 THE COURT: I'm going to step down. I'll review  
18 your case. There is one other matter still pending. There's  
19 still a charge pending against Mr. Peterson that is before  
20 Judge Schoenstedt.

21 MR. BRODSKY: The mandate has not yet been  
22 returned.

23 THE COURT: They believe it has.

24 MR. BRODSKY: I had not seen that.

1 THE COURT: I understood it was.

2 MR. BRODSKY: We can look into that.

3 THE COURT: That is up at some point. I think  
4 rather than have everybody move down to his courtroom, I'm  
5 going to have him come down here to eventually address that  
6 if there's any potential problems with that just so we have  
7 all matters clear.

8 MR. BRODSKY: I understand. Thank you.

9 THE COURT: I'll step down.

10 (A recess is taken.)

11 THE COURT: One more housekeeping matter here. As  
12 I get the discovery in, is there any objection by the defense  
13 or the State for the party who subpoenaed it that I either  
14 send it to them or turn it over to them for dissemination?  
15 Any objection?

16 MR. GLASGOW: No.

17 MR. BRODSKY: No, your Honor.

18 THE COURT: I do have a subpoenaed document here  
19 from McComb. I believe the defense subpoenaed that.

20 MR. BRODSKY: Macomb County coroner?

21 THE COURT: Yes.

22 MR. BRODSKY: We will disseminate that to the  
23 State.

24 THE COURT: All right. Show the Court did hear

1 all of the evidence that was there and has heard the  
2 arguments with regards to it. Show the Court finds  
3 compelling reasons to keep Mr. Peterson detained. I guess  
4 the defense is going to appeal that issue with regards to it.

5 I'm not going to go into anything specific  
6 with regards to my ruling or any of the evidence that was  
7 there. I think it would be quite clear for the Appellate  
8 Court. Also, I'm going to set a status date to see the  
9 status of the appeal with regards to this. Is there any  
10 objection to August 19th?

11 MR. CONNOR: That's my son's birthday. Is there  
12 any other day?

13 THE COURT: I'll set it for my anniversary, the  
14 23rd. How is that? August 23rd? That's the date the  
15 defense wanted before. We will set it for status as to the  
16 appeal.

17 Is there anything further with regards to  
18 this case?

19 MR. BRODSKY: Venire.

20 THE COURT: I'm going to discharge them. I'm  
21 going to tell them we will notify them, continue to not read  
22 or listen, you know, with regards to it. We can address that  
23 on the 23rd. We will have to address it from time to time or  
24 whoever is here in my seat will have to address it should the

1 appeal take longer or should either side decide to take it to  
2 the Supreme Court. I don't know whether anybody wants to ask  
3 the Appellate Court to order me to discharge that, but at  
4 this time since we have that pool, I'm going to retain it as  
5 best I can with regards to it.

6 I do want to say, with regards to the  
7 defense, defense still -- and the State, if you're going to  
8 do any interviews or that outside the normal course of  
9 things, remember to now let -- give me notification and the  
10 ARDC. I did not see any notification as to the Fox News, WGN  
11 interviews or that the other day. It may be in the mail or  
12 something like that, but I didn't see it. I know Mr. Brodsky  
13 will usually fax that to me. Remember to keep that in mind  
14 with regards to that even during the pendency of this.

15 At this time, all the -- the documents and  
16 that, unless the Appellate Court orders otherwise, will  
17 remain sealed and in the same status as we were before.  
18 Anything else?

19 MR. CONNOR: Apparently that is our subpoena.  
20 Apparently, it's Macomb, Michigan.

21 THE COURT: Sorry. You will get it any way.  
22 Nothing further with regards to this?

23 MR. GLASGOW: No, your Honor.

24 MR. BRODSKY: No.

1 THE COURT: Judge Schoenstedt is outside. I'll  
2 let him come in. He can address the gun case.

3 (Brief pause.)

4 THE BAILIFF: All rise.

5 (Brief pause.)

6 (The following proceedings are had  
7 before the Honorable Richard C.  
8 Schoenstedt:)

9 THE COURT: Thank you, all. Apparently we are  
10 making this convenient to everybody but me.

11 Mr. Brodsky, good morning, Mr. Glasgow and to  
12 your staff. This is on the case that has been pending before  
13 me, 08 CF 1169. I did look through the file. I believe your  
14 were right when they indicated to me off the record that no  
15 mandate has been returned from the Appellate Court.

16 Is that your understanding?

17 MR. BRODSKY: I have not received a copy of the  
18 mandate.

19 MR. GLASGOW: That's correct, your Honor.

20 MS. OSTERBERGER: I called the Appellate Court  
21 during our break. They did verify to me they have not yet  
22 sent the mandate back to the Supreme Court. Although, the  
23 Supreme Court's mandate has now been filed with the Appellate  
24 Court, so it should be coming pretty soon.

1 THE COURT: I would suggest a status date. Is  
2 there a status date on the other case?

3 MR. BRODSKY: August 23rd.

4 THE COURT: How does that work for everybody on  
5 this case?

6 MR. GLASGOW: Fine, judge.

7 THE COURT: We will again work out the logistics.  
8 August 23rd at 9:30 in my courtroom for now as to the issues  
9 regarding this case.

10 Mr. Brodsky, this occurred to me, too,  
11 there's still co-counsel on my case. They are not here. I  
12 want to note that for the record. I know Mr. Abood and I  
13 don't know who else.

14 MR. BRODSKY: And I will be filing his withdrawal  
15 when jurisdiction reverts.

16 THE COURT: Just to let you know that's an issue  
17 that needs to be addressed. Anything else?

18 MR. CONNOR: No, your Honor.

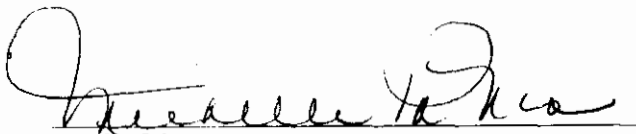
19 THE COURT: Thank you, all, very much. We're in  
20 recess.

21 (WHEREUPON, which were all the  
22 proceedings had in the above-entitled  
23 cause this date.)  
24

1           IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
2                           WILL COUNTY, ILLINOIS  
3  
4

5           I, MICHELLE PANOS, Official Court Reporter for  
6 the Circuit Court of Will County, Twelfth Judicial Circuit of  
7 Illinois, do hereby certify that I reported in shorthand the  
8 proceedings had in the above-entitled cause; and that I  
9 thereafter caused the foregoing to be transcribed into  
10 typewriting, which I hereby certify to be a true and accurate  
11 transcript of the proceedings had before the Honorable  
12 STEPHEN D. WHITE, Judge of said Court.  
13  
14  
15

16                   Dated at Joliet, Will County, Illinois, the 8th  
17 day of July, 2010.  
18  
19

20  
21   
22 Michelle Panos  
23 Official Court Reporter  
24 License No. 084-004154